Supreme Court, U.S.
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No. 97-0074

In The

Supreme Court of the United States

October Term, 1996

SALLY ANN VALOT, JEAN HANSEN and ANNA D. ROSSA,

Petitioners,

vs.

SOUTHEAST LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

MICHAEL J. LOUGHMAN
Counsel of Record
DANIEL D. MASON
DAVID K. SMITH
BAUMGARTNER & O'TOOLE
Attorneys for Respondents
502 Broadway
Lorain, Ohio 44052
(216) 244-1212

71820 (800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21 Lutz Appellate Services, inc.

STATEMENT OF THE CASE

Petitioners' Statement of the Case is adopted by the Respondents.

REASONS FOR DENYING THE WRIT

I.

REVIEW IS NOT PRUDENT. THE FIRST AMENDMENT IS NOT IMPLICATED BY PETITIONERS' CLAIM FOR STATUTORY BENEFITS.

The First Amendment to the Constitution of the United States provides, in pertinent part: "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the government for a redress of grievances." In this case, the Respondent School Board did not abridge the right of Petitioners to petition the government for a redress of grievances.

The District Court found that applying to a state agency in order to obtain benefits due persons who meet certain objective criteria is *not* petitioning the government for a redress of grievances. Apdx. C-10. The appellate court below did not reach a *per curiam* opinion on this issue, but Judge Ryan, concurring, recognized that the First Amendment is not implicated in this case because the state law right to unemployment compensation does not implicate the First Amendment's right to petition.[1] Judge Engel bypassed the issue, deciding the case by determining that the Petitioners' claims did not touch upon matters of public concern. Apdx. A-14.

We believe it would be a mistake to accept Petitioners'

1. On the other hand, Judge Merritt without analysis held that the right of petition was at stake. (Apdx. A-30.)

invitation to review the standard for petition cases when this is not a petition case.

The Petitioners at page 9 of their petition argue that there is a conflict in the circuits, specifically that *San Filippo v. Bongiovanni*, 30 F.3d 424 (3rd Cir. 1994), *cert. denied*, 461 S. Ct. 731 (1995), is contrary to the decisions of other circuits. *See* Apdx. A-13. However, this Court denied the petition for writ of certiorari in *San Filippo* (just two years ago). The Petitioners have made no showing why this Court should revisit *San Filippo*.

The instant case would seem a particularly poor choice to revisit *San Filippo*. Only one judge of the appellate court offered an opinion contra *San Filippo*. Apdx. A-13. The decision of the lower court is hardly persuasive, and definitely not binding, authority. "While it was conclusive and binding upon the parties as respects that controversy . . . , the lack of an agreement by a majority of the Court on the principles of law involved prevents it from being an authoritative determination for other cases. . . ." *United States v. Pink*, 315 U.S. 203, 216, 62 S. Ct. 552, 558, 86 L. Ed. 796, 810 (1942).[2]

II.

THIS CASE OFFERS NO NEW ISSUES REGARDING DUE PROCESS.

The Petitioner does not argue that the lower court misapplied the Due Process Clause. Rather, the Petitioners merely argue that the lower court was wrong in holding that the School Board did not act arbitrarily.

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2. We also note that none of the active judges of the lower court requested a vote on the suggestion for a rehearing en banc, which thereby suggests that the lower opinion does not raise compelling issues. Apdx. B-1.

The lower court weighed the interests of the Board and the Petitioners and determined that the Board was not arbitrary under the circumstances. The Petitioners, therefore, are not asking this Court to review the legal standards associated with the Due Process Clause. They want this Court to review the facts and make a finding contrary to the decisions of the two lower courts. The Court should decline the opportunity.

III.

THE COURT SHOULD NOT REVIEW THE PETITIONERS' EQUAL PROTECTION ARGUMENT. THE PETITIONERS HAVE MISCHARACTERIZED THE BOARD'S MOTIVATION AS "PUNISHMENT" OF THE PETITIONERS.

We begin by noting that all three judges below, albeit writing separately, agreed that no equal protection violation occurred. We also vehemently dispute the Petitioners' argument that the School Board wanted to "punish" the Petitioners. Contrary to the Petitioners' assertions at pages 18-19 of their brief, the lower court did *not* find that the School Board merely sought to punish the Petitioners. On the contrary, the lower courts found that the Board was motivated by a desire to protect its "fisc." Apdx. A-16, A-24.

The Petitioners state that they have "an unusual kind of equal protection case" (Petitioners' brief, p. 18), but do not say how their case will further the law of equal protection. The Petitioners seem to be stating that the Board violated equal protection by acting arbitrarily or irrationally. But, the lower courts reviewed the facts and found otherwise. It will not further the progress of the law simply to review these factual circumstances one more time. The Court should therefore decline the invitation.

CONCLUSION

Based on the foregoing, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

MICHAEL J. LOUGHMAN
Counsel of Record
DANIEL D. MASON
DAVID K. SMITH
BAUMGARTNER & O'TOOLE
Attorneys for Respondents
502 Broadway
Lorain, Ohio 44052
(216) 244-1212